

with and assisting the OFCCP in fulfilling its responsibilities.

(d) In the event the applicability of EO 11246 and implementing regulations is questioned, the contracting officer shall forward the matter through agency channels for resolution.

#### **22.804 Affirmative action programs.**

##### **22.804-1 Nonconstruction.**

Except as provided in 22.807, each nonconstruction prime contractor and each subcontractor with 50 or more employees and (a) a contract or subcontract of \$50,000 or more or (b) Government bills of lading that in any 12-month period, total, or can reasonably be expected to total, \$50,000 or more, is required to develop a written affirmative action program for each of its establishments within 120 days from the commencement of its first such Government contract, subcontract, or Government bill of lading.

##### **22.804-2 Construction.**

(a) Construction contractors that hold a nonexempt (see 22.807) Government construction contract are required to meet (1) the contract terms and conditions citing affirmative action requirements applicable to covered geographical areas or projects and (2) applicable requirements of 41 CFR 60-1 and 60-4.

(b) Each contracting agency shall maintain a listing of covered geographical areas that are subject to affirmative action requirements that specify goals for minorities and women in covered construction trades. Information concerning, and additions to, this listing will be provided to the principally affected contracting officers in accordance with agency procedures. Any contracting officer contemplating a construction project in excess of \$10,000 within a geographic area not known to be covered by specific affirmative action goals shall request instructions on the most current information from the OFCCP regional office, or as otherwise specified in agency regulations, before issuing the solicitation.

(c) Contracting officers shall give written notice to the OFCCP regional office within 10 working days of award

of a construction contract subject to these affirmative action requirements. The notification shall include the name, address, and telephone number of the contractor; employer identification number; dollar amount of the contract; estimated starting and completion dates of the contract; the contract number; and the geographical area in which the contract is to be performed. When requested by the OFCCP regional office, the contracting officer shall arrange a conference among contractor, contracting activity, and compliance personnel to discuss the contractor's compliance responsibilities.

##### **22.805 Procedures.**

(a) *Preaward clearances for contracts and subcontracts of \$1 million or more (excluding construction).* (1) Except as provided in 22.805(a)(7) below, if the estimated amount of the contract, subcontract, or basic ordering agreement is expected to aggregate \$1 million or more or to increase the aggregate value of an existing contract to \$1 million or more, the contracting officer shall request the appropriate OFCCP regional office to determine whether a contractor is awardable before (i) award of any contract, including any indefinite delivery contract or letter contract, (ii) modification of an existing contract for new effort that would constitute a contract award, or the (iii) issuance of any basic ordering agreement.

(2) Preaward clearance for each proposed contract and for each proposed first-tier subcontract of \$1 million or more shall be requested by the contracting officer directly from the OFCCP regional office(s). Verbal requests shall be confirmed in writing.

(3) When the contract work is to be performed outside the United States with employees recruited within the United States, the contracting officer shall send the request for a preaward review to the OFCCP regional office serving the area where the proposed contractor's corporate home or branch office is located in the United States, or the corporate location where personnel recruiting is handled, if different from the contractor's corporate home

or branch office. If the proposed contractor has no corporate office or location within the United States, the preaward review request action should be based on the location of the recruiting and training agency in the United States.

(4) The contracting officer shall include the following information in the preaward review request:

(i) Name, address, and telephone number of the prospective contractor and of any corporate affiliate at which work is to be performed.

(ii) Name, address, and telephone number of each proposed first-tier subcontractor with a proposed subcontract estimated at \$1 million or more.

(iii) Anticipated date of award.

(iv) Information as to whether the contractor and first-tier subcontractors have previously held any Government contracts or subcontracts.

(v) Place or places of contract performance and first-tier subcontracts estimated at \$1 million or more, if known.

(vi) The estimated dollar amount of the contract and each first-tier subcontract, if known.

(5) The contracting officer shall allow as much time as feasible before award for the conduct of necessary reviews by OFCCP. As soon as the apparently successful contractor can be determined, the contracting officer shall process a preaward review request in accordance with agency procedures, assuring, if possible, that the preaward review request is submitted to the OFCCP regional office at least 30 calendar days before the proposed award date.

(6) In the event the Director has not made a final preaward clearance determination within 30 calendar days from submission of the clearance request, the contracting officer shall withhold award of the contract for an additional 15 calendar days, or until clearance is received, whichever occurs first. If the additional 15 calendar days expire, and the Director has not either found the contractor to be in compliance or made a final written determination declaring the contractor ineligible for reasons of noncompliance, the award may be made to the contractor in question.

The contracting officer shall notify the OFCCP regional office of the award.

(7) If the procedures specified in (5) and (6) above would delay award of an urgent and critical contract beyond the time necessary to make award or beyond the time specified in the offer or extension thereof, the contracting officer shall immediately inform the OFCCP regional office of the expiration date of the offer or the required date of award and request clearance be provided before that date. If the OFCCP regional office advises that a preaward review cannot be completed by the required date, the contracting officer shall submit written justification for the award to the head of the contracting activity, who, after informing the OFCCP regional office, may then approve the award without the preaward clearance. If an award is made under this authority, the contracting officer shall immediately request a postaward review from the OFCCP regional office.

(8) If, under the provisions of (7) above, a postaward review determines the contractor to be nonawardable, the Director, may authorize the use of the enforcement procedures at 22.809 against the noncomplying contractor.

(b) *Furnishing posters.* The contracting officer shall furnish to the contractor appropriate quantities of the poster entitled *Equal Opportunity Is The Law*. These shall be obtained in accordance with agency procedures.

#### **22.806 Inquiries.**

(a) An inquiry from a contractor regarding status of its compliance with EO 11246, or rights of appeal to any of the actions in 22.809 shall be referred to the OFCCP regional office.

(b) Labor union inquiries regarding the revision of a collective bargaining agreement in order to comply with EO 11246, shall be referred to the Director.

#### **22.807 Exemptions.**

(a) Under the following exemptions, all or part of the requirements of EO 11246 may be excluded from a contract subject to EO 11246:

(1) *National security.* The agency head may determine that a contract is essential to the national security and that the award of the contract without